

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TIMOTHY ROOSEVELT,)	
)	
Petitioner/Defendant,)	
)	CIVIL NO. 04-CV-4026-JPG
vs.)	
)	CRIMINAL NO. 02-CR-40010
UNITED STATES of AMERICA ,)	
)	
Respondent/Plaintiff.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

Before the Court is Petitioner’s application for certificate of appealability (Doc. 10), along with his notice of appeal from the Order of this Court denying petitioner’s motion under 28 U.S.C. § 2255. Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” Further, Section 2253(c)(3) provides: “The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).”

In his motion, Petitioner reiterates his claim that the Court relied on constitutionally impermissible factors in sentencing, in violation of the principles espoused by the recent Supreme Court cases of *Blakely v. Washington*, 124 S.Ct. 2531 (2004) and *United States v. Booker*, 125 S.Ct. 738 (U.S., Jan. 12, 2005). However, the Seventh Circuit already has held that these rulings do not apply retroactively to convictions that were final prior to the *Booker* decision. *McReynolds v. United States*, 397 F.3d 479, 481 (7th Cir. 2005). Petitioner was sentenced in February 2003, almost two years prior to the *Booker* decision; therefore, the holdings of *Blakely* and *Booker* are inapplicable,

as was previously footnoted in the Court's March 21, 2005 order (*see* Doc. 4).

Therefore, the Court finds that Petitioner has not made "a substantial showing of the denial of a constitutional right." Accordingly, the motion for issuance of a certificate of appealability is **DENIED.**

IT IS SO ORDERED.

Dated: August 12, 2005

s/ J. Phil Gilbert

U. S. District Judge